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FROM: Department of Justice
Environment and Natural Resources Division
Natural Resources Section

Fax No. 202-305-0274
Voice No. 202-305-1461

SENT BY: James D. Gettle

TO: David L. Henkin

RESEND ON 3/28/2007

FAX No. 808-521-6841

NUMBER OF PAGES SENT (INCLUDING COVER PAGE): 3

SPECIAL INSTRUCTIONS:

EXHIBIT 1



U.S. Department of Justice

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March 27, 2007

Via Facsimile Transmission (808-521-6841)

David L. Henkin
Earthjustice
223 South King Street, Suite 400
Honolulu, Hawai'i 96813

Re: *Ilioulaokalani Coalition v. Rumsfeld*, Civ. No. 04-00502 DAE BMK

Dear David:

We are in receipt of your March 23, 2007 e-mail requesting information regarding future training of the 2nd Brigade as a Stryker Brigade Combat Team ("SBCT"), a copy of which is attached. Your email suggests that if the Army intends to conduct training during the month of April that was not previously disclosed during discovery, Plaintiffs may seek to expedite their appeal of Magistrate Judge Kurren's March 23, 2007 Order. However, any request by Plaintiffs to expedite district court review of the March 23, 2007 Order would be unwarranted because the Army has not undertaken and does not presently plan to undertake Stryker training that is new or different from that previously disclosed to the Court and Plaintiffs during consideration of an appropriate injunction pending NEPA compliance.

Your demand for assurances on the scope of Stryker training to be conducted in the future is directly at odds with the Court's previous rulings and, thus, the Army will not provide any such assurances. Specifically, the Court has previously ruled that the Army must maintain the discretion and flexibility to determine what training is necessary to ensure the 2nd Brigade is effectively trained as a SBCT. See Court's March 1, 2007 Order denying Plaintiffs' Motion to Clarify December 29, 2006 Order Setting Interim Injunction at 4-5, citing *Gilligan v. Morgan*, 413 U.S. 1, 10-11 (1973). Accordingly, Plaintiffs have no right to interfere with the Army's discretion or limit its flexibility in determining what training is needed during the upcoming months in order to effectively train and transform the 2nd Brigade into a SBCT.

Please be guided accordingly in considering how to proceed in light of the Court's March 23, 2007 Order denying Plaintiffs' request for supplemental discovery.

Sincerely,

BARRY A. WEINER
JAMES D. GETTE

Weiner, Barry (ENRD)

From: David Henkin [dhenkin@earthjustice.org]
Sent: Friday, March 23, 2007 10:45 PM
To: Weiner, Barry (ENRD); Gette, James (ENRD)
Cc: Katkow, Mark CIV 251D L OSJA
Subject: Motion for Supplemental Disclosures

Gentlemen,

This afternoon, we received Judge Kurren's order denying our request for supplemental disclosures re: training. We intend to appeal the decision to Judge Ezra pursuant to LR 74.1. Whether we need to expedite the appeal to Judge Ezra depends on whether, between now and the end of April (when the appeal process would normally take place), the Army plans to conduct any training that was not previously disclosed. Please let me know. Alternatively, if the Army will not provide the information we need to determine whether there is an exigent situation, please let me know that as well.

Mahalo, David

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